In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 59

CARL ALDO MARZANI, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

On pages 52–62 of the Government's Brief it is argued that evidence of the making by the petitioner of the statements involved in the first nine counts of the indictment was admissible under counts 10 and 11, to explain the circumstances and to show that the petitioner acted wilfully. We indicated that the petitioner could have requested (which he did not do) an instruction that the jury consider such evidence only on the issue of petitioner's purpose and intent. We also indicated that such evidence had significance in relation to the intent question (Br. 58).

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These statements, however, are subject to some amplification, since the evidence of the making by the petitioner of the statements involved in the first nine counts was relevant under counts 10 and 11 for other reasons. We desire, without detracting from the admissibility of such evidence on the question of willfullness or intent, to direct the Court's attention to these other reasons.

During the course of his interview with Mr. Panuch, Deputy Assistant Secretary of State, on June 1, 1946, at which time he made the false statements on which counts 10 and 11 of the indictment are based, the petitioner, as part of his denial of the charges described by Mr. Panuch, and as "proof" of his claimed innocence, cited the previous investigations made by the F. B. I. and the Civil Service Commission. The Government witness and the petitioner corroborate each other on this point. (See R. 50, 51, 179.)

Up to that time Mr. Panuch had never heard of the Civil Service Commission proceedings with respect to the petitioner (R. 51). Within two weeks from the date of the interview with petitioner, Mr. Panuch asked the Civil Service Commission for the file and record in the Marzani case, and "read it very carefully" (R. 53).

So the fact is that the petitioner himself made the entire record of the Civil Service Commission in his case, including the petitioner's false statements to the F. B. I. and the investigator of the Commission, an inseparable part of his false

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statements to Mr. Panuch. In addition, the petitioner asked Mr. Panuch to read a book of evidence on the subject he said he had presented to the Civil Service Commission (R. 57, 179).

And, after reading the Civil Service Commission's file, Mr. Panuch, sometime in July or the early part of August, 1946, told the petitioner "It's O. K." (R. 59). He testified he told the petitioner that "so long as Russell and I (Panuch) were around, there would be no persecution" (R. 60).

It is clear from the record that the petitioner, having succeeded through the false statements which are the basis of counts 1 to 9, inclusive, of the indictment in obtaining and retaining employment by agencies of the Government, again succeeded in June, 1946, through his false statements to Mr. Panuch, and by including the false statements in the Civil Service Commission file, in having the State Department's request for petitioner's resignation withdrawn. And so the evidence admitted under counts 1 to 9, inclusive, would be admissible and relevant under counts 10 and 11 alone, if necessary, as part of the statements made to Mr. Panuch on June 1, 1946, and on which action favorable to the petitioner was taken.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1948.

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